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RETHINKING THE JURISDICTION OF THE NATIONAL INDUSTRIAL COURT IN HUMAN RIGHTS ENFORCEMENT IN NIGERIA: LESSONS FROM SOUTH AFRICA*

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Abstract

In 2009, the *Fundamental Rights (Enforcement Procedure) Rules, 2009* were introduced to improve administration of justice in human rights cases in Nigerian courts. The Rules established that all human rights cases could be filed in any High Court in the State where the violation occurred. Depending on the parties involved and the place of the violation, this gives wide opportunity for victims to file a case either at the Federal, State, or the Federal Capital Territory High Court. However, in 2011, the 1999 Constitution of Nigeria was altered and thereby vested with exclusive jurisdiction over human rights cases arising from labor relations in the National Industrial Court (NIC). With exclusive jurisdiction over such matters now vested in the NIC, High Courts have been excluded from exercising jurisdiction in labor-related human rights issues despite the fact the NIC is yet to have judicial divisions in all states of the federation. A critical study of these and other issues relating to the jurisdiction of the NIC in human rights would suggest the need to rethink the human rights jurisdiction of the Court. To correct the identified anomalies, this article advocates for lessons to be drawn from practices in South Africa, where the Labor Court still shares jurisdiction with other courts in labor-related human rights cases despite its exclusive jurisdiction in other labor matters.

1. THE IMPERATIVE OF RESPECT FOR FUNDAMENTAL HUMAN RIGHTS has been globally acknowledged since 1948. This growing global acknowledgment was, at least in the modern age, initially triggered by the adoption of the *Universal Declaration of Human Rights*

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(UDHR) in that year.¹ By their nature, human rights are inherent rights which every person² is entitled to simply because s/he is a human being.³ Understandably, many aspire to protection of these rights as inherent human entitlements⁴ and desire their enforcement when infringed upon. Governments also play a very important role in the protection and enforcement of these rights. This should not be surprising because the fulfilment of these rights is often pivotal to the generation and maintenance of the confidence of its citizens in any government. Again, the protection of human rights is essential for the promotion of equality and freedom in every country. In this connection, late Justice Kayode Eso⁵ had occasion to declare that, “freedom and human rights were worth fighting for, to the uttermost.”⁶ In pursuit of this goal, the 1999 *Constitution of the Federal Republic of Nigeria*, (as altered)⁷ [1999 Constitution], specially vests

¹ GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71 (1948).

² “Every person” here refers to every human being regardless of sex, age, societal or health status, physical ability or otherwise. See also Moses Gamzhi Chiroma, *Challenges of Enforcement of Fundamental Human Rights under the Constitution of the Federal Republic of Nigeria, 1999* (Lagos: Nigerian Institute of Advance Legal Studies, University of Lagos Campus, Akoka, 2010) at 10, online: <www.nials-nigeria.org/projects/CHALLENGES%20OF%20ENFORCEMENT%20PROJECT.pdf>.

³ However, by the nature of human rights provisions in the Nigerian Constitution, which is christened rather as “Fundamental Rights,” it has been judicially held that artificial persons would be entitled to claim these rights as “persons” despite not being “human beings.” See *Okechukwu v EFCC*, [2015] All FWLR (Pt 766) 503-24. This raises the jurisprudential question of whether or not human rights are preserved in the Nigerian Constitution or whether what is preserved are indeed “Fundamental Rights” as the name connotes. In response to this, it has been explained that the fundamental rights enshrined in the Constitution form three categories. One of these is not human rights exclusive to their beneficiary for the main reason that the beneficiary is a human being. Rather, there are those which are “the rights of every person, whether human or corporate or unincorporated, citizen or alien.” Surprisingly, in this category are “rights to life, to personal liberty, to compensation and public apology,” etc. For more on this thought, see Mohammed Bello, “Opening Address” in Commonwealth Secretariat, ed, *Developing Human Rights Jurisprudence – Fourth Judicial Colloquium on the Domestic Application of International Human Rights Norms*, vol 4 (London: Commonwealth Secretariat, 1991) 3 at 4; Chiroma, *supra* note 2 at 10 (“[h]uman rights are in some circles discussed, but erroneously, as synonymous with constitutional rights”).

⁴ Ike D Uzo, *Guide to Fundamental Rights Litigation* (Lagos: Law Digest Publishing Co, 2005) at 1.

⁵ He was a prominent Jurist and a former Justice of the Supreme Court of Nigeria. He was born on September 18, 1925. See “Justice Kayode Eso’s death shocks family” *Vanguard* (17 November 2012), online: <www.vanguardngr.com/2012/11/justice-kayode-eso-death-shocks-family/>.

⁶ Kayode Eso, *Thoughts on Human Rights and Education* (Ibadan: St. Paul’s Publishing House, 2008) at 16.

⁷ Under the Nigerian constitutional jurisprudence, any changes or amendments made to the Constitution are officially referred to as “alterations.” This is a departure from general practice in most other jurisdictions where such changes are called amendments. This explains why it is proper to say “as altered” rather than “as amended.” Section 9 of the Constitution provides for “alteration” of the Constitution and not “amendment.” Federal legislators seem to be aware of this when they refer to Acts which effect change to the Constitution as “Alteration Acts” rather than

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trial jurisdiction in the Federal and State Superior Courts of Record⁸ for the enforcement of human rights.⁹

Until 2011,¹⁰ the National Industrial Court (NIC) was not constitutionally designated as a Superior Court of Record.¹¹ For this reason, its recognition in its enabling law¹² as a Superior Court of Record¹³ stood contrary to the provisions of the Constitution which (at the relevant time) prohibited the declaration and recognition of any superior courts other than those listed in the Constitution as Superior Courts of Record.¹⁴ Thus, at that time, the NIC was not a direct creation of the Constitution, but was created by an ordinary Act of the National Assembly. For this reason, the court also did not have jurisdiction in regard to the enforcement of human rights, as such jurisdiction was vested by the Constitution in other trial courts.¹⁵

“Amendment Acts.” See *e.g. Constitution of the Federal Republic of Nigeria (First Alteration) Act, 2010*, online: <www.wipo.int/edocs/lexdocs/laws/en/ng/ng040en.pdf>; *Constitution of the Federal Republic of Nigeria (Second Alteration) Act, 2010*, online: <www.wipo.int/edocs/lexdocs/laws/en/ng/ng041en.pdf>; *Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010*, online: <www.wipo.int/edocs/lexdocs/laws/en/ng/ng042en.pdf> [Third Alteration Act]. See also Abdullahi Saliu Ishola, “Finality Jurisdiction of the High Court in Local Government Election Petitions in Kwara State of Nigeria: Constitutional Challenges” (2014) 17:2 Nigerian LJ 171 at 172.

⁸ As the law currently stands, the superior courts of record with trial jurisdiction at both state and federal level are the Federal High Court, the State High Courts, the High Court of the Federal Capital Territory, Abuja, and the National Industrial Court. See *Constitution of the Federal Republic of Nigeria 1999*, s 6(5)(c) & (cc) [1999 Constitution]; *Third Alteration Act*, *supra* note 7, s 2.

⁹ 1999 Constitution, s 46(1).

¹⁰ The *Third Alteration Act* came into effect precisely on 4 March 2011.

¹¹ As at that time, the Superior Courts of Record recognized by the Constitution were: the Supreme Court, the Court of Appeal, the Federal High Court, the High Court of a State, the High Court of the Federal Capital Territory, Abuja; the Sharia Court of Appeal of a State; the Sharia Court of Appeal of the Federal Capital Territory, Abuja, the Customary Court of Appeal of a State, and the Customary Court of Appeal of the Federal Capital Territory, Abuja. See, before the alteration, 1999 Constitution, s 6(5)(c).

¹² The enabling law of a court is the statute that creates it. In this regard, the enabling law of the National Industrial Court is the *National Industrial Court Act, 2006*. See *National Industrial Court Act, 2006* [NIC Act].

¹³ See *NIC Act*, *ibid*, s 1(3)(a).

¹⁴ To this end, see again before the alteration, 1999 Constitution, s 6(3). It provides: “The courts to which this section relates, established this Constitution for the Federation and for the States, specified in subsection 5 (a) to (i) of this section shall be *the only* superior courts of record in Nigeria” [emphasis added].

¹⁵ These trial superior courts are the Federal High Court, the State High Courts, and the High Court of the Federal Capital Territory, Abuja. See 1999 Constitution, s 46(1).

In recognition of the uniqueness of the NIC as a special court with jurisdiction over labor disputes¹⁶ and of the relevance of human rights issues to labor justice,¹⁷ the need to reposition the court to play a greater role in labor-related human rights cases led to the enactment of the *Constitution of the Federal Republic of Nigeria (Third Alteration) Act*.¹⁸ This Act, among other innovations, vests exclusive jurisdiction in the NIC in those human rights matters which arise from the employee/employer relationship.¹⁹ This development would ordinarily be a commendable one. However, a critical look at its implications raise some concerns regarding the setback it stands to bring to the administration of human rights justice in the country. For instance, the court will, from time to time, have to grapple with the demarcation of its jurisdiction, and will be constantly concerned to ensure that any human rights violation it deals with was truly committed in relation to a labor dispute/issue.²⁰ This may engender delays in the administration of justice, something that the extant reforms sought to eradicate. In addition to this, it is still doubtful whether the *Fundamental Rights (Enforcement Procedure) Rules, 2009* would be applicable to human rights proceedings before the court.

Accordingly, this study attempts to offer some thoughts on the need to rethink the jurisdiction recently vested in the NIC in labor-related human rights matters in Nigeria. The article argues that the arrangement is a setback to the achievement of fast-track justice in human rights litigation in Nigeria, which was one of the goals of the *Fundamental Rights (Enforcement*

¹⁶ See *NIC Act*, *supra* note 12 s 7.

¹⁷ Relevant human rights concerns to the question of labor justice include rights such as the right to freedom from discrimination under section 42, the right to freedom of religion under section 38, among others.

¹⁸ *Third Alteration Act*, *supra* note 7.

¹⁹ *Ibid*, s 6; see also, after alteration, *1999 Constitution*, s 254C (1)(d) & (g).

²⁰ For example, where there are human rights violations between co-staff or staff members and the employer, will these qualify as human rights violations in Nigeria's fundamental rights enforcement jurisprudence or simply as an employment relations dispute? The distinction that is made between these two concepts is also puzzling to an extent.

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*Procedure) Rules, 2009 [FREP Rules, 2009].*²¹ The article strongly suggests a review of the jurisdiction of the NIC in labor-related human rights disputes, with a view to moving away from the current conferment of “exclusive jurisdiction” in such cases in that court towards an enjoyment of “concurrent jurisdiction” with other trial superior courts of record in such matters. In this regard, lessons ought to be drawn from South Africa on the workability of allowing the NIC to share jurisdiction with the High Courts in labor-related human rights cases in Nigeria.

II. JURISDICTION IN HUMAN RIGHTS ENFORCEMENT PROCEEDINGS IN NIGERIA

Some Nigerian courts have been vested with jurisdiction to entertain matters pertaining to the rights listed in Chapter IV of the 1999 Constitution, and to interpret these fundamental human rights provisions of the Constitution.²² As Chapter IV of the 1999 Constitution is not the only human rights instrument in the country, those courts have also been empowered to enforce human rights provisions that are contained in other instruments.²³ Thus, to appreciate the courts vested with jurisdiction in human rights enforcement in the nation, and to grasp the nature of such jurisdiction, one must consider the situations before and after the year 2011 when the FREP Rules were adopted. This is the chronological approach adopted in this article.

²¹ This is the existing procedural law for the enforcement of human rights in Nigeria; human rights scholars have variously appraised the strengths and weaknesses of these processes. See *e.g.* Abiola Sanni, “Fundamental Rights Enforcement Procedure Rules, 2009 as a tool for the enforcement of the African Charter on Human and Peoples’ Rights in Nigeria: The need for far-reaching reform” (2011) 11 Afr Hum Rts LJ 511; MT Jibril & A Ishaq, “An Appraisal of the Novel Provisions of the Fundamental Rights (Enforcement Procedure) Rules 2009” (2008) 27/28 Ahmadu Bello University LJ 14; Iloh FO, “Fundamental Rights Enforcement in Nigeria: Wearing a New Garb” (2012) 2:1 University of Ibadan LJ 119; Oludude Rufus Adeoluwa, “The New Fundamental Rights (Enforcement Procedure) Rules 2009: A Huge Relief to Human Rights Enforcement” (2011) 16 The Jurist 206.

²² 1999 Constitution, s 46.

²³ *Fundamental Rights (Enforcement Procedure) Rules, 2009* at Preamble (3(a)-(b)) [*FREP Rules, 2009*].

A. JURISDICTION IN HUMAN RIGHTS ENFORCEMENT BEFORE 2011

As far back as 1979, jurisdiction in human rights enforcement had been vested in the High Courts.²⁴ A High Court in any State, where any of the provisions of Chapter IV of the Constitution “has been, is being or likely to be contravened” in relation to the person affected, is therefore empowered to entertain any claim regarding that possible human rights violation.²⁵ A glaring challenge in this regard is the absence of a clear definition of what “a High Court in that State” connotes under the 1999 Constitution.²⁶ However, under the *Fundamental Rights (Enforcement Procedure) Rules, 1979*, which applied until they were replaced by the *FREP Rules, 2009*, “Court” was defined to mean “the Federal High Court or the High Court of a State.”²⁷

From the foregoing, it is safe to posit that before 2011, the High Courts (*i.e.* both the Federal and the State High Courts, and the High Court of the Federal Capital Territory, Abuja), were vested with, and exercised, jurisdiction in the enforcement of human rights.²⁸ The jurisdiction so vested and exercised was considered to be concurrent except, based on some judicial authorities,²⁹ to the extent “where a fundamental rights enforcement action involved the Federal Government or any of its agencies.” In such cases, the jurisdiction to adjudicate the matter was vested exclusively in the Federal High Court.”³⁰

²⁴ There have been three categories of High Courts in the country since that time, namely the Federal High Court, State High Courts, and the High Court of the Federal Capital Territory, Abuja.

²⁵ 1999 Constitution, s 46(1); *Constitution of the Federal Republic of Nigeria, 1979* s 42(1). The 1979 Constitution is now repealed.

²⁶ This is a departure from the position under the 1979 Constitution where “High Court” was defined under the definition section, *i.e.* section 277, to refer to: “the Federal High Court or the High Court of a State.” A similar definition is not contained in the definition section of the 1999 Constitution.

²⁷ Order 1(2).

²⁸ David I Efevwerhan, *Principles of Civil Procedure in Nigeria* (Enugu: Chenglo, 2007) at 340-44.

²⁹ For example, *Tukur v Government of Gongola State* (1989), 4 NWLR (pt 117) 517.

³⁰ Efevwerhan, *supra* note 28 at 344.

B. JURISDICTION IN HUMAN RIGHTS CASES AFTER 2011

In 2011, Nigeria effected some restructuring in the jurisdiction of its courts with regards to human rights enforcement. A notable result of the reform was that, in addition to the State and Federal High Courts, the National Industrial Court of Nigeria (NIC) is now vested as well with jurisdiction to entertain matters or issues relating to human rights.³¹ Furthermore, the NIC is now regarded as a superior court of record;³² hence, it is now considered a court of equal or concurrent jurisdiction with the State and Federal High Courts. The limitation for the NIC, however, is that even though it is now a court of equal/concurrent jurisdiction with State and Federal High Courts in the area of entertaining and interpreting human right disputes, the human rights disputes it can entertain must relate to labor, employment, trade unions, or industrial relations, or must have occurred in the workplace..³³ This should not be surprising because the original jurisdiction vested in the NIC as a Superior Court of Record is meant to be specific to the industrial or employment relations area.³⁴

Based on the foregoing, it is clear that exclusive jurisdiction, with regards to human rights disputes arising from all matters relating to employment, industrial relations, trade union, and all kinds of issues arising in the workplace, is now vested in the NIC. Interestingly, while an appeal can lie as of right from the decisions of the NIC to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of the Constitution, other appeals from the NIC's decisions can only proceed with leave of that court.³⁵ The question as to whether a person alleging the infringement of fundamental human rights within the workplace or in the industrial relations setting can, in the alternative, apply to a State or Federal High Court for redress or

³¹ 1999 Constitution, s 254C(1)(d); *Third Alteration Act*, *supra* note 7, s 6.

³² 1999 Constitution, s 6 (5)(cc); *Third Alteration Act*, *supra* note 7, s 2.

³³ 1999 Constitution, s 254 C(d)(1).

³⁴ 1999 Constitution, s 254C(d)(1).

³⁵ See altered 1999 Constitution, s 243(2); *Third Alteration Act*, *supra* note 7 s 5.

determination of his/her rights (given the fact that both the High Court and the NIC are vested with equal jurisdiction to entertain issues relating to fundamental human rights) could have been left open for debate. However, the declaration made in the *Third Alteration Act* to the effect that the exclusive jurisdiction of the NIC would apply notwithstanding anything to the contrary in other provisions of the Constitution³⁶ would make it difficult for the High Courts to be clothed with further jurisdiction over labor-related human rights issues.

In addition to this, however, some other issues related to the labor-related human rights jurisdiction now vested in the NIC require critical examination. These issues include a query about the nature of the human rights jurisdiction of the NIC and an enquiry as to whether its enabling laws truly divest the High Courts of jurisdiction in the enforcement of human rights violations within the labor and employment relations realm. It is also intriguing whether the FREP Rules can be applied in proceedings before the NIC. These questions are examined in Part III.

III. ISSUES IN THE HUMAN RIGHTS JURISDICTION OF THE NIC

Part III undertakes a critical examination of several issues that tend to show the need for rethinking the jurisdiction of the NIC in the area of human rights enforcement. This analysis will reveal many lapses in the current position of the law and therefore call for certain reforms to be enacted.

³⁶ See *1999 Constitution*. The opening paragraph of section 254C(1) declares: “Notwithstanding the provisions of section 251, 257 and 272 and anything contained in this Constitution...”; section 251 deals with the exclusive jurisdiction of the Federal High Court; section 257 deals with the jurisdiction of the High Court of the Federal Capital Territory, Abuja to hear and determine any civil or criminal proceedings; and section 272 deals with the general jurisdiction of the High Court of a State.

A. THE EXCLUSIVENESS OF THE NIC'S HUMAN RIGHTS JURISDICTION AND THE IMPLICATIONS FOR THE STATE AND FEDERAL HIGH COURTS

The exclusive jurisdiction of the NIC in all matters relating to labor, trade disputes, and industrial relations, which extends to those employment matters which involve the infringement of human rights, certainly seems to limit the power of the State and Federal High Courts in this area. As the law stands, all disputes relating to employment and allied matters pending before Federal, State, or FCT High Courts in Nigeria are required to be transferred to the NIC for determination.³⁷ A relevant case in this regard is *Josiah Madu v Solus Schall Nigeria Ltd.*³⁸ In this case, the claimant, Josiah Madu, sued the respondent, Solus Schall, at the State High Court in Port Harcourt. He claimed approximately N538 Million in special and general damages for wrongful termination of his employment with the company. Counsel for the respondent challenged the jurisdiction and competence of the suit before the State High Court by way of a preliminary objection. The objection was premised on section 254 of the 1999 Constitution via the *Third Alteration Act*, 2010, which had divested State High Courts of the jurisdiction to entertain matters relating to and/or connected with labor, employment, and other industrial based disputes. At the close of the arguments from the counsel for both parties, the presiding judge of the Rivers State High Court upheld the respondent's arguments and consequently declined jurisdiction to entertain the suit.³⁹ Similarly, in the case of *Echelukwo John O & 90 Others v Igo-Etiti Local Government Area*,⁴⁰ the Court of Appeal rebuked the presiding trial judge of the

³⁷ See *Echelukwo John O & 90 Others v Igbo-Etiti Local Government Area*, Appeal No CA/E/261/2011 [unreported] [*Echelukwo John O*]. Judgement was delivered at the Enugu Division of the Court of Appeal, on 10 December 2012.

³⁸ [unreported]. The summary of the facts of the case was retrieved from website of the law firm that handled the case for the defendant. See Gbenga Biobaku & Co, *The Exclusive Jurisdiction of the National Industrial Court in Labor and Employment Matters*, online: <www.gbc-law.com/The%20Exclusive%20Jurisdiction%20of%20the%20National%20Industrial%20Court.pdf>.

³⁹ *Ibid.*

⁴⁰ *Echelukwo John O*, *supra* note 37.

Enugu State High Court for striking out the case rather than transferring it to the NIC, as it was the court which had jurisdiction over the matter at issue. The court therefore declared that it is not open to any High Court to choose between striking out the case or transferring it to the NIC, as the courts are bound to transfer such cases to the NIC.⁴¹

The propriety of the NIC exercising exclusive jurisdiction in labor-related human rights cases has, to date, never been challenged by any judicial decision. To the contrary, many cases have confirmed and supported that court's exclusive power in this regard.⁴² Thus, the practice tends to show that such cases are now being filed before the NIC and no longer taken to the High Court. For instance, in *Mrs Folarin Oreka Maiya v The Incorporated Trustees of Clinton Health Access Initiative, Nigeria & 2 Ors*,⁴³ the applicant commenced her action against the respondents at the NIC (Abuja Division).⁴⁴ The case was filed by way of originating motion, pursuant to sections 34(1)(a), 42 and 254C (1)(d), (f) & (g) of the 1999 Constitution. She alleged violation of her fundamental rights to dignity and freedom from discrimination as guaranteed by those sections. The violation arose in an employment relationship under a labor contract. In overruling the objection to the jurisdiction of the court, the NIC held that it has exclusive jurisdiction to the

⁴¹ The Court of Appeal rebuked the trial High Court judge for failing to transfer the case instead of striking out as he did. In the words of Justice Okoro, who read the lead judgment, the Court of Appeal posited thus:

When the learned trial judge stated in his judgment that he is not bound by section 24(3) of the National Industrial Court Act, I am not sure he knew what he was saying. This is an Act of the National Assembly and no court can say he is not bound [sic: bound] by its provisions. I wonder what else the learned trial judge wanted before he could simply order the matter to be transferred.” (*Echelukwo John O, ibid* at 12).

⁴² For instance, see the following cases *Sunday Ainabebholo v Edo State University Workers Farmers Multi-Purpose Co-operative Society & Ors*, (2015) LPELR-24513 (CA); *University of Ilorin Teaching Hospital v Dr Dele Abegunde*, (2012) LPELR; *PAM & ORS v ABU & ORS*, (2013) LPELR-21406 (CA).

⁴³ Suit No NIC/ABJ/13/2011, online: <judgment.nicn.gov.ng/pdf.php?case_id=346>.

⁴⁴ Although there is only a single National Industrial Court, structurally and for administrative convenience, the court is divided into Judicial Divisions spread across the Federation. Currently, there are ten Judicial Divisions: Abuja, Lagos, Kano, Enugu, Yola, Makurdi, Calabar, Akure, Jos, and Ibadan. See National Industrial Court of Nigeria, *Judicial Divisions of National Industrial Court of Nigeria*, online: <nicn.gov.ng/division.php>.

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exclusion of other courts to entertain the suit. Consequently, the court assumed jurisdiction and the matter was successfully determined by the court in favor of the applicant.

As the above cases demonstrate, it must follow that section 46 of the 1999 Constitution, which pertains to the special jurisdiction of the High Court in fundamental human rights matters, must no longer be read in isolation. Rather, it should be read alongside the provisions of the Constitution that vest exclusive jurisdiction in the NIC over labor-related human rights cases.⁴⁵ This, however, raises further concerns that will be addressed in the next section.⁴⁶

B. CONCERNS FOR THE EXCLUSIVE JURISDICTION OF THE NIC

As declared by both the *African (Banjul) Charter on Human and People's Rights*⁴⁷ (including its protocols) and the *Universal Declaration of Human Rights, 1948*, fundamental human rights are inviolable, inalienable, and inherent rights that need to be given adequate protection and

⁴⁵ A cardinal rule of statutory interpretation requires that a legislative instrument be read as a whole for its proper interpretation and it is not legally valid for a provision to be read, interpreted, and applied in isolation. Regarding this, Uwais CJN (as he was then, now retired) of the Supreme Court declared the following:

It is settled that in interpreting the provisions or section of a statute or indeed the Constitution, such provisions or section should not be read in isolation of the other parts of the statute or Constitution. In other words, the statute or Constitution should be read as a whole in order to determine the intendment of the makers of the statute or Constitution.

PDP v INEC, (1999) 11 NWLR (Pt 626) 200 at 142; see also *Ojukwu v Obasanjo & 3 Ors*, SC 199/2003 (delivered on 2 July 2004), online: <www.nigeria-law.org/LawReporting/2004/July%202004/Chief%20%20Chukwuemeka%20Odumegu%20Ojukwu%20v%20Chief%20Olusegun%20Obasanjo%20&%20Ors.htm>. In the *Ojukwu* case, it was similarly declared by Uthman Mohammed JSC (as he was then, later CJN, and now retired): “those who have the duty to interpret the provisions of a statute or Constitution must look at the statute or Constitution as a whole in order not to veer away from the intendment of its framers”.

⁴⁶ Apart from the issues regarding jurisdiction of the NIC in human rights enforcement that is the subject of this critique, it should be noted that the final jurisdiction of the court and/or the lack of appeals against decisions of the court in civil cases other than human rights matters have also been elaborately examined and criticized. This has lead to a call for review of the relevant constitutional provisions to allow appeals to the Court of Appeal, or to permit the creation of the National Industrial Court of Appeal along similar lines to what operates in South Africa. For this critical analysis, see Abdulfatai Aperua-Yusuf, Daud Momodu & Abdullahi Saliu Ishola, “Non-Appealable Decisions of the National Industrial Court of Nigeria: A Critical Analysis” (2015) 5:6 Am Intl J Contemporary Research 156.

⁴⁷ 27 June 1981, OAU Doc CAB/LEG/67/3 rev 5, 21 ILM 58 art 1 (entered into force 21 October 1986).

enforcement expeditiously.⁴⁸ The number of labor-related human rights cases that would arise from time to time across the country cannot, by any imagination, be predicted. Again, when the 1999 Constitution left open the possibility for the victim of any human rights violation to approach any High Court in any State where the violation arises,⁴⁹ it offered quick aid and easy access to courts for human rights enforcement. Therefore, the vesting of exclusive jurisdiction in the NIC to entertain labor-related human rights matters may have the consequence of delaying human rights enforcement, a problem recently sought to be addressed through the enforcement rules procedures.⁵⁰ It is arguable that that the NIC has, by this arrangement, been saddled with more responsibilities than it could probably bear. This is because employment and industrial cases, by their very nature and centrality to the economy, are prone to being numerous and being frequently instituted in the courts. Ousting the jurisdiction of the High Courts in this area will therefore appear to be a bad idea as the NIC may not be able to manage the resulting workload.⁵¹ With regard to the workload that the NIC would have to manage in the coming years and decades, it should be noted that there are 36 States and a Federal Capital Territory (FCT) in the country.⁵² Yet this singular national court (the NIC) now has the sole responsibility of handling all of the labor-related human rights matters emanating from all the states of the Federation and the FCT.

Other than the massive delays this will likely occasion or make worse, the first major challenge posed by this situation is that the NIC has not yet established divisions in all the states

⁴⁸ *Ibid* art 4.

⁴⁹ See *1999 Constitution*, s 46(1). It states the following: “Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress”.

⁵⁰ See *FREP Rules, 2009* at Preamble (3(a)-(b)).

⁵¹ For further discourse on this, see Ifeoluwa Olubiyi, “Jurisdiction and Appellate Powers of the Nigerian National Industrial Court: Need for further Reform” (2016) 7:3 *The Gravitas Rev of Business & Property* L 44.

⁵² *1999 Constitution*, s 3(1) & Part I.

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of the Federation. In fact, the ten divisions currently created by the court are not spread evenly around the country so as to give easy access to its justice in all States.⁵³ This makes the court rather inaccessible to applicants. Unlike High Courts that constitutionally exist in every single State in Nigeria,⁵⁴ there is just one “National Industrial Court” established for the entire Federation. However, the recent appointment of many more judges to the NIC may ameliorate this as well as the “delay” problem.

Furthermore, although the *Fundamental Right (Enforcement Procedure) 2009* now urges the courts that hear human rights cases to work towards the speedy and efficient enforcement of such rights,⁵⁵ the grant of exclusive jurisdiction to the NIC may, for the reasons already offered, impede the realization of this goal.⁵⁶ Certainly, the expeditious determination of fundamental matters before the court must be a major concern.⁵⁷

C. QUERIES ON THE HUMAN RIGHTS ENFORCEMENT JURISDICTION OF THE NIC

Apart from the grant to the NIC of exclusive jurisdiction in labor-related human rights matters, there is a very serious marked difference between the jurisdiction conferred on the NIC and the one conferred on the High Court with respect to the enforcement of Chapter IV of the 1999 Constitution. This has the likely consequence that the *FREP Rules, 2009* may not be applicable to the NIC. In this regard, the NIC is conferred with jurisdiction “relating to or connected with any dispute over the *interpretation* and *application* of the provisions of Chapter IV of this

⁵³ National Industrial Court of Nigeria, *Judicial Divisions of National Industrial Court of Nigeria*, *supra* note 44.

⁵⁴ *1999 Constitution*, s 2.

⁵⁵ See *FREP Rules, 2009* at Preamble (3(f)).

⁵⁶ Justice Babatunde Adeniran Adejumo, “The National Industrial Court: Past, Present and Future” (Paper delivered at the Refresher Course Organized for Judicial Officers of Between 3-5 Years Post Appointment, Otutu Obaseki Auditorium, National Judicial Institute, Abuja, 24 March 2011), online: <nicn.gov.ng/nji.php>.

⁵⁷ *Ibid.*

Constitution.”⁵⁸ On the other hand, with respect to the same Chapter IV, the High Court is vested with jurisdiction “to hear and determine any application made to it.”⁵⁹ The High Court is also extensively empowered to “make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of *enforcement* or *securing the enforcing* within that State of any right to which the person who makes the application may be entitled under this Chapter.”⁶⁰

From the forgoing, it is clear that the jurisdiction vested in the NIC with respect to Chapter IV of the Constitution, after it may have ascertained that the human rights issues involved relate to labor and employment, can only be invoked in disputes “over the *interpretation* and *application* of the provisions of Chapter IV.” This implies that the NIC cannot be taken constitutionally as having jurisdiction in human rights “enforcement” other than to resolve disputes “over the interpretation or application” of Chapter IV – *i.e.* it cannot address enforcement of violation of the rights conferred in the Chapter. Many other provisions of the Constitution make this conclusion logical and reasonable. Both in the ordinary English usage and the technical legal sense, the words “interpretation”; “application”; and “enforcement” mean different things. Specifically, “interpretation” and “application” have connections with the law, such as talking about the “application and interpretation of the law,” while “enforcement” has to do with rights, such as “enforcement of rights.” The word “application” lexically connotes “a use to which something is put”;⁶¹ “interpretation” is “the act or the result of interpreting,” whereas to

⁵⁸ 1999 Constitution, s 254C [emphasis added].

⁵⁹ 1999 Constitution, s 46(2).

⁶⁰ *Ibid* [emphasis added].

⁶¹ Merriam-Webster's Collegiate Dictionary, 10th Edition (Springfield, MA, USA: Merriam-Webster, Incorporated, 1995) *sub verbo* “application”.

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interpret” means “to explain or tell the meaning of”;⁶² “enforcement” means “to carry out effectively.”⁶³

An individual whose right is violated, being violated, or likely to be violated, even in the course of his employment, is required to approach the High Court in the State where the alleged violation occurs or threatens for redress.⁶⁴ Upon doing this, the person seeking such redress can make any application to the court, which may include paying the court to interpret and apply the provisions of Chapter IV, among other things.⁶⁵ Even though, by the nature of the jurisdiction conferred on the NIC, it may be taken that the High Court will no longer have jurisdiction to “interpret and apply” the provisions of Chapter IV when it relates to labor matters, the NIC cannot be taken to have jurisdiction on labor disputes relating to Chapter IV generally, other than when the dispute is “over the interpretation and application of the provisions of Chapter IV.” Thus, unlike the High Court, the NIC does not have jurisdiction even over labor-related human rights matters other than when the human rights dispute at issue is “over the interpretation and application” of Chapter IV. Thus, the NIC would not have jurisdiction when the dispute concerns the enforcement of “any right to which the person who makes the application may be entitled” under the Chapter IV. This may appear confusing, but the truth is that the two issues are different.

There is a clear difference between the jurisdiction of the courts in Nigeria in relation to the “enforcement” of rights under Chapter IV⁶⁶ and their jurisdiction over the “interpretation” of the provisions in this chapter. Generally, the Constitution did not make separate provisions

⁶² *Ibid*, *sub verbo* “interpretation”.

⁶³ *Ibid*, *sub verbo* “enforcement”.

⁶⁴ *1999 Constitution*, s 46(1).

⁶⁵ Other things include praying the court to make any order, issue certain writs or give some directions “for the purpose of enforcement or securing the enforcing within that State of any right to which the person who makes the application may be entitled”. *1999 Constitution*, s 46(2).

⁶⁶ This may include enforcement of the judgment of the court.

regarding the interpretation of Chapter IV that are different from what applies to interpretation of other provisions of the Constitution. Rather, the separate emphasis it makes on the jurisdiction of the courts in relation to Chapter IV is in regard to the “enforcement” of the rights contained in that chapter. By declaring specifically that the jurisdiction of the NIC in relation to Chapter IV rights is to be merely connected to any dispute “over interpretation and application” of the Chapter, the issue of enforcement is not within the jurisdiction of the NIC. However, determining when disputes may arise “over interpretation and application” of Chapter IV as it relates to labor and employment is an entirely separate and distinct exercise.⁶⁷

Furthermore, the constitutional power that enabled the Chief Justice of Nigeria (CJN) to make the *FREP Rules, 2009* requires specifically that the rules be made “with respect to the practice and procedure of a High Court for the purposes of section 46.”⁶⁸ Certainly, the NIC is not a High Court in respect of whose practice and procedure the *FREP Rules, 2009* could have been made. Furthermore, section 46 only empowers any person who alleges the actual or likely violation of his or her rights under Chapter IV to apply to the High Court in the relevant State, regardless of whether the contravention arises in the course of employment or labor relation. The NIC’s jurisdiction in relation to the Chapter only arises when there is “any dispute over the interpretation and application” of the provisions of the Chapter. Again, the *FREP Rules, 2009* clearly define the Court to which it applies thus:

“*Court*” means the Federal High Court or the High Court of a State or the High Court of the Federal Capital Territory, Abuja.⁶⁹

There is no provision in the Constitution that justifies applying the *FREP Rules, 2009* to the NIC.⁷⁰ Since human rights in Nigeria can only be enforced through the application of the *FREP*

⁶⁷ This may require some further research.

⁶⁸ *1999 Constitution*, s 46(3).

⁶⁹ See *FREP Rules, 2009*, Order I (2).

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Rules, 2009 and not via any other Rules of Court,⁷¹ it can be concluded that the NIC is not empowered to enforce human rights, even as it relates to labor and employment issues. Rather, the power of the court relates and connects to “any dispute over interpretation and application” of Chapter IV and not “enforcement” of the rights conferred under the Chapter.⁷² It is therefore not surprising that the NIC strictly requires any human rights application filed before it to comply with its normal Rules and Procedure and not necessarily with the *FREP Rules, 2009*.⁷³

It must be stated clearly that when other courts are involved in the interpretation of Chapter IV, rather than in the enforcement of the rights contained therein, whether at the trial or at the appellate level, the exercise has different connotations. For instance, with regard to when appeals will go to the Supreme Court as of right, a distinction is made between appeals on decisions requiring the “interpretation of any provisions of the Constitution (including Chapter IV)”⁷⁴ and decisions in contravention of the rights stipulated in Chapter IV, which will involve the enforcement of human rights.⁷⁵ With all these anomalies noted, there is need for the NIC’s

⁷⁰ Even the provisions of section 254D(1) of the Constitution conferring powers on NIC to exercise all the powers of a High Court in the exercise of the powers conferred on it by the Constitution cannot be extended to justify the application of the FREP Rules to the court. *1999 Constitution*, s 254D(1).

⁷¹ *Alhaji Ibrahim Abdulhamid v Tabal Akar & Anor*, SC 240/2001, online: <www.nigeria-law.org/Alhaji%20Ibrahim%20Abdulhamid%20v%20Tabal%20Akar%20&%20Anor.htm>; *Nicolas Igbokwe v Christian Edom & Ors*, CA/PH/613/2008, online: <lawpavilionplus.com/summary/judgments/?suitno=CA%2FPH%2F613%2F2008&from=sjIo5vQR3pKO6LiapkwdILmwaRWLVg6PxDbZTuBRZUA%3D>.

⁷² The NIC is conferred with jurisdiction to enforce awards and decisions made by an administrative tribunal. See *1999 Constitution*, s 254C(4).

⁷³ From the information gathered from some lawyers that have approached the court to file human rights cases, the registrar of the court has refused the processes prepared in line with the FREP Rules for deviating from the format stipulated in the NIC Rules. For a general critical appraisal of the strengths and weaknesses of the FREP Rules, see Dakas CJ Dakas, “Judicial Reform of the Legal Framework of Human Rights Litigation in Nigeria: Novelties and Perplexities” in Epiphany Azinge & Dakas CJ Dakas, eds, *Judicial Reform and Transformation in Nigeria: a Tribute to Hon Justice Dahiru Musdapher*, GCON, FNIALS, Chief Justice of Nigeria (Lags: Nigerian Institute of Advanced Legal Studies, 2012) 334.

⁷⁴ See *1999 Constitution*, s 233(2)(b). For similar provisions, applicable to the Court of Appeal, see *1999 Constitution*, s 241(1)(c).

⁷⁵ See *1999 Constitution*, s 233(2)(c). For similar provisions, applicable to the Court of Appeal, see *1999 Constitution*, s 241(1)(d).

jurisdiction in human rights matters to be reviewed. To do this, recourse may be made to the South African context. Their experience may teach us some useful lessons.

III. THE EXCLUSIVE JURISDICTION OF THE LABOUR COURT IN SOUTH AFRICA

In South Africa, the *Labor Relations Act (LRA)*⁷⁶ established the Labor Court and Labor Appeal Court.⁷⁷ The court, which has a status similar to a division of the High Court of South Africa in respect of an alleged or threatened violation of a constitutionally entrenched right,⁷⁸ adjudicates matters relating to labor relations. Such matters include disputes relating to relationships between employer and employee, and employers and trade unions. Among the salient provisions of the *LRA*, the Labor Court is conferred with exclusive jurisdiction over labor matters, which include collective bargaining, trade unions, strikes, lockouts, unfair dismissal, unfair labor practices, etc.

Section 157(1) of the *LRA* provides the following on this:

Subject to the Constitution and Section 173 and except where this Act provides otherwise, the Labor Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of this Act or in terms of any other law are to be determined by the Labor Court.

The above section appears to oust the jurisdiction of the High Court in deciding labor matters. A closer look at the section reveals, however, reveals certain provisos that materially interfere with the avowed objective of the Act to oust the jurisdiction of the High Court. Firstly, the ouster provision is subject to the Constitution of South Africa; secondly, the section vests exclusive jurisdiction in the *LRA* “in respect of all matters that elsewhere in terms of this Act or in terms of any other law are to be determined by the Labor Court.” Perhaps this informs the concern

⁷⁶ The *LRA* is the statute established in 1996 for labor matters and has been amended in 1998 and 2002.

⁷⁷ The Labor Appeal Court is the appellate court where appeals from the Labor Court lie.

⁷⁸ *Labor Relations Act* (S Afr), No 66 of 1995, s 157(2) [*LRA*].

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expressed by the presiding officer in *Mondi Paper (A division of Mondi Ltd) v Printing Wood and Allied Workers Union & Others*.⁷⁹ In this case, the court was faced with the issue of jurisdiction of the High Court in the interdiction of employees who were involved in improper picketing. The court held that the onus to prove that the jurisdiction of the High Court has been ousted or excluded as suggested by section 157 is a very tasking one. However, even though the court admitted to the inherent ambiguities in the section regarding the exclusivity of jurisdiction, it resolved that section 157(1) ousts the jurisdiction of the High Court in respect of matters that are to be determined by the Labor Court.

In *Fedlife Assurance Ltd v Wolfardt*,⁸⁰ the Supreme Court of Appeal (South Africa) deviated from the position in *Mondi* and held that the section does not confer exclusive jurisdiction generally on the Labor Court to deal with matters pertaining to employer and employee relationships. The exclusive jurisdiction of the Labor Court, the court held, arises only in respect of “matters that elsewhere in terms of this Act⁸¹ or in terms of any other law are to be determined by the Labor Court.” As such, matters mentioned in sections 9, 24(7), 26, 59, 63(4), 66(3), 68(1) and 69⁸² of the *LRA* would be the proper matters contemplated by section 157(1), upon which only the Labor Court would have jurisdiction to the exclusion of the High Court.

Put succinctly, the Labor Court in South Africa does not have general jurisdiction in labor matters; therefore, the jurisdiction of the High Court is not ousted by section 157(1). If a dispute falls within the overall sphere of employment relations, the High Court will have jurisdiction over such matters. This was the reasoning in *Fredericks & Others v MEC for*

⁷⁹ (1997) 18 ILJ 84 (D).

⁸⁰ (2001) 22 ILJ 2407 (SCA).

⁸¹ *LRA*, *supra* note 78, ss 9, 24(7), 26, 59, 63(4), 66(3), 68(1), 69.

⁸² These are the sections that contain the various provisions of the *LRA* and identify where specific disputes may arise between employer and employee.

Education and Training, Eastern Cape & Others.⁸³ The position in the South African jurisprudence hence seems to open the room for the High Court to be part of the adjudication of labor matters. This forms a basis of comparison with the Nigerian jurisdiction, where the exclusivity of the NIC completely ousts the jurisdiction of the High Court.

Of note is the fact that the *LRA* does not make any special provisions for the occasions in which a labor right has been breached. In the case of Nigeria, recourse for redress must be had to the NIC exclusively.⁸⁴ While the *LRA* is not specific in addressing this area, it would seem that the High Court in South Africa would likely exercise concurrent jurisdiction over such labor-related human rights matters considering the position held by the court in both *Fedlife* and *Fredericks*. There is therefore a lesson for Nigeria here in rethinking the jurisdiction of the NIC in human rights matters, so as to make its jurisdiction concurrent with that of the High Courts.

IV. CONCLUSION AND RECOMMENDATIONS

From the foregoing, it may be argued that, rather than vesting exclusive jurisdiction in the NIC in labor-related human rights cases, the jurisdiction in such special human rights cases should be exercised concurrently by both the NIC and the High Court, as seems to be the practice in South Africa. To achieve this without further conflicting constitutional provisions, this article strongly recommends that section 254C(1)(d) of the Constitution (as altered) be re-drafted to read as follows:

254C (1) Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, *but without prejudice to, and also subject to the jurisdiction conferred on the High Court in section 46 (1) of this*

⁸³ (2002) 2 BLLR 119 (CC).

⁸⁴ Aperua-Yusuf, Momodu & Ishola, *supra* note 46.

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Constitution, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters -

- (a)
- (b)
- (c)
- (d) relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labor, industrial relations, trade unionism, employer's association or any other matter which the Court has jurisdiction to hear and determine, *subject to and without prejudice to the jurisdiction conferred on the High Court in section 46 (1) of this Constitution, which shall also include labor and employment related human rights issues.*

Once section 254C is drafted as suggested above, it will no longer constitute any prejudice to section 46(1) of the 1999 Constitution; rather, it will become subject to it. The logical interpretation of section 254(C)(1)(d), which has also repeated the same restrictions to the exclusive jurisdiction conferred on the NIC, would mean that while the NIC can only exercise jurisdiction in labor-related human rights matters, the High Court can exercise jurisdiction in all human rights matters, including those that emanate from labor and employment relations. Consequently, the jurisdiction of the NIC in labor-related human rights matters would no longer be exclusive, but concurrent with the High Court.

Furthermore, since the NIC is the only court vested with exclusive jurisdiction to entertain industrial suits, there is need for the establishment of judicial divisions of the court in *all* states of the federation, with many more judges and many more administrative staff. This will enable the court to achieve the set goals for which it was created. Similarly, a critical look at section 254C(1)(d) of the Constitution would show clearly that the NIC is only vested with jurisdiction in disputes over the interpretation and application of Chapter IV. It enjoys jurisdiction over the enforcement of the rights conferred in that chapter. This logic is fortified by the reasoning that section 46 of the 1999 Constitution refers exclusively to the High Courts with respect to the courts for which the FREP Rules are to be made, and these Rules are the only legal

instrument via which human rights can be enforced in Nigeria. It therefore becomes imperative for section 254C to be reviewed to clearly stipulate the power of the NIC to entertain applications for enforcement of rights in Chapter IV. Also, section 46 should be altered to include the NIC, while the relevant provisions of the FREP Rules should equally be amended to define “Court” to mean the State, the Federal High Courts, and the NIC.